

COMPLIANCE BOARD OPINION NO. 02-14

December 3, 2002

*Ms. Laura Townsend
Director
The Annapolis Policy Institute*

The Open Meetings Compliance Board has considered your complaint that the Annapolis City Council violated the Open Meetings Act in connection with a meeting on September 21, 2002 in Queenstown, Maryland. For the reasons stated below, the Compliance Board finds that no violation occurred.

I

Complaint and Response

The complaint alleged that a quorum of the Annapolis City Council convened a meeting, described as a “budget summit,” on September 21, 2002, at a conference center near Queenstown, on the Eastern Shore. The time and place of the meeting, according to the complaint, rendered it “extremely inconvenient for members of the concerned public to attend.” The complaint also alleged that adequate notice of the meeting was not provided.

In a timely response, City Attorney Paul Garvey Goetzke contended that the Act did not apply to the September 21 gathering, which was characterized as a “budget retreat.” The purpose of the retreat was described as the beginning of “the process of formulating the Mayor’s future budgetary priorities.” Under §6.16.010 of the Annapolis City Code, the Mayor submits an operating budget to the City Council by the second Monday in April. At that time, the City Council’s review and approval process begins.

According to the response, “this retreat was a meeting among the Mayor and the Mayor’s Department Directors and Deputy Directors. Therefore, the retreat did not involve a ‘public body’ as defined by the Act. ... Accordingly, the retreat was not subject to the requirements of the Act.” The response continued: “While the Mayor invited the Aldermen to attend (four attended) to give them an opportunity to ask questions and express their individual views, this was not a meeting of the City Council ‘for the purpose of considering or transacting public business.’” The response also provided a list of attendees, indicating that 22 of the attendees were from the executive side of municipal government, together with the four aldermen.

In a reply to the City's response, you expressed the view that, giving effect to the intent underlying the Open Meetings Act, the gathering on September 21 should be considered as a meeting of a public body – namely, the City Council, “due to the fact that a quorum of the individuals seated on that body attended (five out of a possible total of nine).”¹ As the reply summarized your view of the retreat, it was a meeting “convened by the Mayor of the City of Annapolis, attended by a quorum of the City Council, and held for the purpose of discussing the annual City budget” Consequently, it “meets all the tests laid out by the Act to define an event that would be governed by it.”²

II

Analysis

Each of the Act's requirements – whether concerning notice, public observation of open meetings, the limited grounds for closed meetings, or the preparation of minutes – is described in terms of the obligation of a “public body.” §§10-505, 10-506, 10-507, 10-508, and 10-509 of the State Government Article, Maryland Code. The Annapolis City Council, of course, is a “public body”; the Mayor of Annapolis is not. §10-502(h). Had the aldermen not attended, the budget retreat unquestionably would have been outside the Act. The determinative issue, therefore, is whether the presence of aldermen in sufficient numbers (with the Mayor) to constitute a quorum transformed the session into one that was subject to the Act.

The Act applies only when a public body holds a “meeting.” A meeting is the convening of a quorum of a public body – nearly always, a simple majority – for the consideration or transaction of public business. §10-502(g) and (k). As we have repeatedly held, however, “members of a public body, even a quorum, may attend someone else's meeting without incurring the obligation to follow the Open Meetings Act, so long as the public body itself refrains from ‘the consideration or transaction of public business.’” Compliance Board Opinion 98-8 (December 14, 1998), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 27, 28 (citing §10-502(g) and three prior opinions). This interpretation of the

¹ Four aldermen (as the members of the City Council are known) attended the retreat, as did the Mayor of Annapolis, who by charter is a member and the presiding officer of the City Council. See Annapolis City Charter, Article IV, §§1 and 3.

² The City was afforded an opportunity by the Compliance Board to supplement its response in light of your reply, but the City declined to do so.

Act was endorsed by the Maryland Court of Special Appeals in *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994).

In this situation, it is evident that the aldermen at the budget retreat were attending as invitees at “someone else’s meeting,” the Mayor’s, not as participants in a convened City Council meeting. The Mayor brought together a cadre of her senior officials to begin the process of budget preparation. Budget preparation is solely the Mayor’s responsibility; the City Council, as a public body, has no role in the budget preparation process. Consequently, to the extent that the Mayor chose to include aldermen in this early phase of the budget preparation process, she did so to obtain their individual perspectives.

III

Conclusion

In summary, the Open Meetings Compliance Board finds that the Annapolis City Council did not convene a meeting subject to the Act when four aldermen participated in the Mayor’s budget retreat on September 21, 2002. Because the Act did not apply to the retreat, there can be no violation of the Act’s requirements relating to the site and notice of the meeting.

OPEN MEETINGS COMPLIANCE BOARD

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